IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

Crl.MC.No. 1738 of 2007()

CC.60/2006 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: COMPLAINANT IN CC:

LIC HOUSING FINANCE LTD.
IYYATTU JUNCTION, CHITOOR ROAD,
ERNAKULAM REPRESENTED BY ITS ASST. MANAGER,
A.J.THOMAS.

BY ADV. SRI.P.K.JOSE
SRI.P.D.JOSEPH (PERAYIL)

RESPONDENTS: ACCUSED:

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1. ABRAHAM PHILIP,
S/O.PHILIPOSE PHILIP, VELLOOKKDAN PLANTATION,
STERLING JUNCTION, KALOOR KADAVANTHRA ROAD,
ERNAKULAM, AT PRESENT RESIDING AT GEO BHAVAN,
HOUSE NO.1275,MORARJI GROUND, VAZHAKKALA,
KAKKANAD WEST P.O., ERNAKULAM DIST.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PRTOSECUTOR , HIGH COURT OF KERALA,
KOCHI-31.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1738 OF 2007

Dated this the 31st day of May, 2007

ORDER

The petitioner is the complainant and cognizance has already been taken of the offences punishable, inter alia, under Secs.420 and 471 of the IPC on the basis of a complaint filed by the complainant. The matter stood posted for appearance of the accused. On a number of occasions the case underwent adjournments. But the accused had not entered appearance. On 5/1/07 there was no sitting, the case was adjourned by notification to 9/2/07. The learned Magistrate by the impugned order proceeded to dismiss the complaint and acquit the accused on the ground that the complainant has not produced the correct address of the accused.

2. The learned counsel for the petitioner submits that the complainant is a Company and the endorsement that the complainant is not present is not of any crucial relevance. The

Company was represented by its Manager who was physically present in the court, submits the learned counsel for the petitioner. However, the endorsement of the court shows that the complainant was absent and at this stage I have to go by that noting made by the learned Magistrate.

3. Be that as it may, the personal presence of the complainant was not obviously necessary and the matter stood posted only for furnishing the address of the accused. It is not noted in the order that the complainant was not represented by the counsel. The learned counsel for the petitioner submits that, as a matter of fact, Annexure-I petition had already been filed before the learned Magistrate giving the available address and details of the accused. In these circumstances, it is submitted that the learned Magistrate went wrong in dismissing the complaint and acquitting the accused.

4. Reckoned as an order under Sec.204(4) of the Cr.P.C., the impugned order is one which is revisable. Reckoned as an order of acquittal under Sec.256 of the Cr.P.C., the order is one which is appealable only. Inasmuch as the learned Magistrate has not specified that, the petitioner was left in confusion. That is why the petitioner has come to this Court with this petition

under Sec.482 of the Cr.P.C. In the peculiar facts and circumstances of this case, ignoring the technicality, I am inclined to consider this application under Sec.482 of the Cr.P.C.

5. I accept the submission of the learned counsel for the petitioner. At any rate, I do note that the complainant has been prosecuting his cause with diligence from 24/1/05. For not having furnished the address on one particular date, even assuming that Annexure-I is not available in court, I am satisfied that the petitioner should not be left to lose his cause. I am persuaded to take a lenient view in the interests of justice and I am satisfied that this Crl.M.C. can be allowed. Inasmuch as the accused has not entered appearance before the learned Magistrate at all, I am satisfied that it is not necessary to wait for issue and return of notice to the respondent/accused.

6. In the result;

(a) This Crl.M.C. is allowed.

(b) The impugned order is set aside.

(c) The learned Magistrate is directed to dispose of the matter afresh in accordance with law.

(d) The petitioner shall within 15 days from this date furnish to the court below the correct address of the accused

afresh and shall also take necessary steps to issue process to the accused.

(e) The petitioner shall appear before the learned Magistrate on 14/6/07 to continue the proceedings.

7. Issue a photocopy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge